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Robert V. Wilder
Attorney at Law
4235 Kingsburg Drive
Round Rock, TX 78681

EXAMINER

KRAMER, JAMES A

ART UNIT	PAPER NUMBER
3627	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/852,831
Filing Date: May 10, 2001
Appellant(s): GUTIERREZ ET AL.

Robert Wilder
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed 10/28/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is deficient. Examiner recognizes that Applicant's summary of invention from lines 104-119 on page 4 of the Appeal Brief are supported by the specification. However, Examiner takes notice of the statement on lines 121-122 of the same page that the methodology for the summary of lines 104-119 is set forth in pending claim 1. Applicant asserts that the independent claim supports that the seller must

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authorize a designated number of auction extensions (line 113). In fact Independent Claim 1, merely recites, "determining that an extension of said auction period was authorized by seller" (lines 136-137 on page 5). Examiner notes that this is far broader than requiring that a seller designates a specific number of extensions and takes this opportunity to note that the only issues of matter in this Examiner's Answer will be the limitations as stated in independent claim 1.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-26 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,230,147

ALAIA ET AL

5-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia et al.

Alaia et al. teaches a supplier-bidding auction in which a buyer designates a predetermined maximum acceptable price (column 4; lines 4-7). The auction is conducted electronically between bidders at remote sites and a coordinator (column 3; lines 45-48) (enabling bidders to be connected to auction server through an interconnection network and receiving price bids from bidders for an item during an auction period).

Examiner notes that the dynamics of the supplier-bidding auction of Alaia et al. are identical to those of a regular buyer-bidding auction. Specifically, the buyer of Alaia et al. inputs the description of an item he/she would like to buy (same as a seller inputting the description of an item for sale) and suppliers submit price bids for the right to sell that item (same way buyers would submit price bids for the right to buy the item). In addition, as taught by Alaia et al. the buyer inputs a pre-determined maximum acceptable price, that bids are compared to in order to protect the buyer from unacceptable bids. This is the same as a reserve price, used to ensure the seller is protected from unacceptable bids.

Alaia et al. further teaches a flexible over time system for an auction. Examiner references Figure 11 and the related detailed description starting on column 12; line 49. Specifically, Alaia et al. teaches receiving bids (510). Once a bid is received the system

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determines whether the current time is within a closing time trigger interval. For example if the closing time interval is 2 minutes, then at two minutes before the closing time the system will check to see whether a trigger bid has been made. If there are no trigger bids, then the auction closes. If a trigger bid has been received then the auction goes into overtime.

Examiner further references Alaia et al. column 13; lines 60-62, "In the disclosed auction system, overtime triggers can be based on other parameters or criteria"

Examiner also notes that Alaia et al. column 14; lines 27-30 teaches, "As a general rule, the overtime trigger seeks to extend the auction for a lot if there is any indication that further bidding would somehow be advantageous to the buyer"

Alaia et al. does teach determining that an extension of auction period was authorized by seller if none of price bids was equal to or greater than said predetermined reserve price. In other words, Alaia et al. does not specifically teach the attribute of the trigger bid criteria being associated with the determining whether the bid exceeds the predetermined maximum acceptable price (reserve price of Alaia).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the trigger bid criteria to include determining whether a bid has exceeded a pre-determined maximum acceptable price, as taught by Alaia et al. before deciding whether to close the auction or send it in to overtime, in ensure that the buyer receives a minimum market value for the lot (i.e. the auction stays open in order to provide an advantage to the seller).

(11) Response to Argument

Appellant asserts that the Alaia reference describes a “buyer” offered auction not a “seller” offered auction and that the dynamics of each type of auction are totally different with different operational characteristics, goals and results. Examiner respectfully disagrees and asserts that in fact the dynamics, operational characteristics, goals and results of the two types of auctions are not only similar but exactly the same.

Specifically, the dynamics of an auction include receiving bids for an item and determining a winner based on a set of auction criteria. Whether the criteria represents a high bid, low bid or any other quality/quantity based factor, the dynamics of filtering the bids and determining a winner do not change.

In addition, the auction criteria does not impact the goals and/or results of an auction. One of ordinary skill in the art recognizes that the goal of an auction is to reach market equilibrium (i.e. the lowest price a seller is willing to sell for and the highest price a buyer is will to pay). Independent of who does the bidding, the buyer or seller, the goals and results are still the same.

Therefore, since the dynamics of each auction are exactly the same with the same operational characteristics, goals and results, the buyer auction of Alaia does in fact render the seller auction of Appellant’s invention obvious. Specifically, determining whether a bid is lower than a reserve price is sufficient to render determining whether a bid is higher than a reserve price obvious.

Appellant further asserts that Alaia “necessarily” has a break in the buyer-auction and references the abstract as support. Examiner respectfully disagrees on two levels.

First, Appellant's own quotation from the abstract of Alaia states that "the bidding status of a lot can be set to a 'pending' status". By virtue of the phrase "can be" the auction of Alaia does not "necessarily" have to have a break. This phrasing clearly leaves the option open for an auction, which is not paused.

Secondly, Examiner notes that Alaia teaches two non-related features. The first is "Flexible Overtime" starting on column 13; line 25. The second is "Pending Status" starting on column 16; lines 42. Examiner notes that Alaia teaches that an auction can have Flexible Overtime without requiring a Pending Status. Examiner specifically references column 14; lines 31-59 which teaches several implementations of Flexible Overtime. None of the implementations require setting the status of an auction to "pending".

Based on these points, Appellant's entire argument that Alaia can not be modified to teach the present invention because of a "necessary break" is not valid.

Appellant further asserts that "there is no mention or even suggestion of anything that might even arguably correspond to a predetermined reserve price". Examiner respectfully disagrees and points to Alaia column 4; lines 4-7 that states, "When a bidder submits a bid, that bid is sent to the server component and evaluated to determine whether the bid is from an authorized bidder, and whether the bid has exceeded a pre-determined maximum acceptable price." Examiner once again notes that the "pre-determined maximum acceptable price" is the exact definition of a reserve price. Therefore the auction system of Alaia stores a predetermined reserve price, which could clearly thus be used as an overtime trigger.

In summary, Examiner once again points out that Alaia teaches that overtime in an auction is triggered (automatically extending auction period) by any parameter or criteria

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(column 13; lines 61-62) that would somehow be advantageous to the buyer (column 14; lines 27-30). Examiner further notes that if no bid had been accepted into the system that "exceeded a pre-determined maximum acceptable price (reserve price)" it would clearly be in the best interests of the buyer to put the auction in to overtime (extend the auction period) in an effort to solicit acceptable bids (in the best interests of the buyer).


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

James A. Kramer
Examiner
Art Unit 3627

jak
January 6, 2005

Conferees
Tariq Hafiz
Richard Chilcot
Robert Olszewski


Richard Chilcot
Supervisory Patent Examiner
Technology Center: 2600 3600

Robert V. Wilder
Attorney at Law
4235 Kingsburg Drive
Round Rock, TX 78681